

REMARKS

The Office Action of January 10, 2008, has been received and reviewed.

Claims 1-23, 25, 56-67, and 69-97 are pending and under consideration in the above-referenced application, each standing rejected.

Reconsideration of the above-referenced application is respectfully requested.

New Matter Objection under 35 U.S.C. § 132

The Office has objected to the Amendment of October 17, 2006, under 35 U.S.C. § 132 for introducing new matter into the above-referenced application. Specifically, it has been asserted that the as-filed specification does not provide support for the recitation “light sources... that output light... of about 2,500 lux or less at a distance of about 6 inches to about 12 inches...” in independent claim 1.

The Office has acknowledged that the as-filed specification of the above-referenced application provides support for light therapy apparatus with light sources that output light of about 2,500 lux, but asserts that there is no basis for the claimed intensity “... at a distance of about 6 inches to about 12 inches.” The objected-to phrase has been replaced with “... at a distance suitable for ocular light therapy,” which is supported by the as-filed specification and would be readily understood by those of ordinary skill in the art to include distances of about 6 inches to about 12 inches, as well as other suitable distances between a light source of a light therapy apparatus and the eyes of a subject receiving ocular light therapy.

It is, therefore, apparent that the as-filed specification supports the subject matter at issue. Accordingly, the 35 U.S.C. § 132 objection to the Amendment of October 17, 2006, should be withdrawn.

Rejections under 35 U.S.C. § 112, First Paragraph

Claims 1-20 and 57-72 have been rejected under 35 U.S.C. § 112, first paragraph, for reciting subject matter that purportedly lacks an adequate written description in the as-filed specification.

It has been asserted that the as-filed specification does not describe “hardware in the data processor...” Office Action of October 19, 2007, page 5. As this limitation no longer appears in any of claims 1-20 or 57-72, withdrawal of the corresponding 35 U.S.C. § 112, first paragraph, rejections is respectfully solicited.

In addition, it has been asserted that the as-filed specification does not provide support for the recitation “light sources... that output light... of about 2,500 lux or less at a distance of about 6 inches to about 12 inches...” The Office has acknowledged that paragraph [0026] of the as-filed specification provides support for light therapy apparatus with light sources that output light of about 2,500 lux, but asserts that the as-filed specification does not provide support for light output of that intensity at a distance of about 6 inches to about 12 inches. The as-filed specification does, however, provide support for light that is output at an intensity of about 2,500 lux “... at a distance suitable for ocular light therapy” (*see, e.g.*, paragraph [0026]), as recited in amended independent claim 1.

It is, therefore, respectfully submitted that the as-filed specification provides an adequate written description of all of the subject matter recited in independent claim 1. Accordingly, independent claim 1, and each of claims 2-20 and 57-72 depending directly or indirectly therefrom, is allowable under the adequate written description requirement of the first paragraph of 35 U.S.C. § 112. As such, the 35 U.S.C. § 112, first paragraph, rejections of claims 1-20 and 57-72 should be withdrawn.

Rejections under 35 U.S.C. § 112, Second Paragraph

Claims 63, 65-68, 72, 78, 79, 81-85, 88, and 91 have been rejected for allegedly failing to comply with the definiteness requirement of 35 U.S.C. § 112, second paragraph. Claims 65-68, 72, 78, 79, 84, 85, 88, and 91 were apparently rejected for providing a further structural limitation. No specific reasons were presented for the rejections of claims 81-83.

Although it is believed that one of ordinary skill in the art would consider the subject matter to which each of claims 63, 65-68, 72, 78, 79, 81-85, 88, and 91 to be definite, several of these claims were previously revised in a way that should have improved their clarity. None of

these revisions alters the scope of any of claims 65-68, 72, 78, 79, 81-85, 88, or 91, or of any other claim pending in the above-referenced application.

Claim 63 was rejected because the recitation that the light output device is configured to “reduce or increase... therapeutic ocular light to simulate gradually decreasing light at dusk or gradually increasing light at dawn, respectively,” is considered to be indefinite. The phrase “configured to” has been replaced with “programmed to.” While it is not necessary that the claimed apparatus output light in the claimed manner, the ability of the apparatus to output light in that manner is an additional limitation that would, from the plain language of claim 63, be readily apparent, and thus definite, to one of ordinary skill in the art.

Claims 65 and 66 include structural limitations with regard to the “data input device” of claim 64 (*e.g.*, that the data input device comprises at least one button). Each of claims 65-67 includes structural limitations (namely, control over a light source) with respect to the “data processor” of claim 64. As explained in M.P.E.P. § 2106(II)(B)(A), page 2100-6, computer programs are patentable subject matter. “Of importance is the significance of the data and their manipulation in the real world, *i.e.*, what the computer is doing.” M.P.E.P. § 2106(II)(B)(A), page 2100-6. Thus, limitations regarding what the computer is doing fulfill the definiteness requirement of 35 U.S.C. § 112, second paragraph.

Claim 68 has been canceled without prejudice or disclaimer.

Claim 72 refers to a “transition member” that is “pivotally associated with [a] housing” of a light therapy apparatus to “rotate about the housing.” The Office has not clearly identified any reason for rejecting claim 72 under the second paragraph of 35 U.S.C. § 112. The ability of the transition member to rotate about the housing is clearly a structural feature of the transition member that is not recited in claim 70, from which claim 72 depends.

Claim 78 clearly limits the data processor of the light therapy apparatus claim 76, providing additional detail as to how the data processor controls the light source of that light therapy apparatus. *See, e.g.*, M.P.E.P. § 2106(II)(B)(A), page 2100-6.

Claim 79, which depends from claim 78, provides even further detail as to the manner in which the data processor controls the light source. *See, e.g.*, M.P.E.P. § 2106(II)(B)(A), page 2100-6.

No specific reasoning that would tend to support the rejections of claims 81 and 82 have been presented. Nonetheless, the Office is again reminded that limitations regarding the function of a computer processor meet the requirements of 35 U.S.C. § 112, second paragraph.

The Office has also failed to provide any reason for rejection independent claim 83 under the second paragraph of 35 U.S.C. § 112. It is respectfully submitted that the scope of independent claim 83, and the scope of claims 84 and 85 depending therefrom, are abundantly clear to one of ordinary skill in the art.

Claims 88 and 91 provides clear detail as to the physical properties of the housing – *i.e.*, that it is configured to be held within a single hand. One of ordinary skill in the art would readily understand that the language of claims 88 and 91 refers to the shape and/or size of the housing, as well as to its weight.

As each of claims 65-67, 72, 78, 79, 81-85, 88, and 91 complies with the definiteness requirement of the second paragraph of 35 U.S.C. § 112, it is respectfully requested that the 35 U.S.C. § 112, second paragraph, rejections of these claims be withdrawn.

Rejections under 35 U.S.C. § 102

Claims 1-5, 7-13, 18-21, 56-62, 64-68, 70-72, 83-89, and 93-97 have been rejected under 35 U.S.C. § 102.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single reference which qualifies as prior art under 35 U.S.C. § 102. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

With respect to inherency, M.P.E.P. § 2112 provides:

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) . . . ‘To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of

ordinary skill . . .” *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1991).

Whitcher

Claims 87-89 have been rejected under 35 U.S.C. § 102(b) for being drawn to subject matter that is purportedly anticipated by the subject matter described in U.S. Patent 6,381,124 to Whitcher et al. (hereinafter “Whitcher”).

The description of Whitcher are limited to a portable computer that includes an LCD monitor with CCFL backlights. With respect to the brightness of the monitor, or “screen assembly 73,” of that computer, Whitcher merely describes that it “provides full vivid color display, even in *dimly lit* environments, which is an object of the present invention.” Col. 6, lines 18-20 (emphasis supplied). Whitcher does not provide any express or inherent description that the monitor, or “screen assembly 73,” of the disclosed computer is any brighter than a typical 256 color VGA monitor.

Nor would the CCFL backlights of such a computer necessarily, or inherently, emit light that is bright enough to provide ocular light therapy. If a computer monitor emitted light at an intensity sufficient to provide ocular light therapy, as has been asserted, it could not be comfortably viewed by an individual.

Furthermore, Whitcher does not expressly or inherently describe that the light emitted by the CCFL backlights of the monitor of the computer described therein “primarily ha[s] a blue wavelength.” Rather, the description of Whitcher is limited to a 256 color “screen assembly 73” that “provides full vivid color...” Col. 6, lines 18-20.

Therefore, the monitor of the computer described in Whitcher does not expressly or inherently describe, or anticipate, each and every element of the ocular light therapy apparatus of independent claim 87.

Claims 88 and 89 are both allowable, among other reasons, for depending directly from independent claim 87, which is allowable.

Marsh

Each of claims 1-5, 11, 13, 18-21, 56, and 57 is rejected under 35 U.S.C. § 102(b) for reciting subject matter that is assertedly anticipated by the disclosure of U.S. Patent 6,135,620 to Marsh (hereinafter “Marsh”).

In the rejection of claims 1-5, 11, 13, 18-21, 56, and 57, an assumption has apparently been made that the EXIT sign described in Marsh outputs light at a high enough intensity to provide ocular light therapy. *See* Office Action of January 10, 2008, page 3. This assumption is not supported by Marsh, nor has the Office provided any other evidence in its support. In any event, it is respectfully submitted that Marsh does not anticipate each and every element of any of claims 1-5, 11, 13, 18-21, 56, or 57.

With respect to independent claim 1, it is respectfully submitted that Marsh lacks any express or inherent description of a light therapy apparatus that includes a plurality of light sources and “a portable housing... carrying... the light output device, and configured to be placed upon a generally horizontal surface in an upright position.”

The Office has overlooked the fact that an EXIT sign is configured to be permanently mounted to a wall or ceiling. Thus, the housings of EXIT signs are not “portable.”

Moreover, Marsh does not expressly or inherently describe an EXIT sign with a housing that is “configured to be placed upon a generally horizontal surface in an upright position.” Again, EXIT signs, including those described in Marsh, are configured to be mounted to vertical walls or to hang from ceilings, not to be “placed upon” generally horizontal surfaces.

For these reasons, it is respectfully submitted that Marsh does not expressly or inherently describe, or anticipate, each and every element of the light therapy apparatus of independent claim 1 or of the light therapy device of independent claim 21. As such, independent claim 1 and independent claim 21 are both drawn to subject matter that, under 35 U.S.C. § 102(b), is allowable over the subject matter described in Marsh.

Each of claims 2-5, 11, 13, 18-20, 56, and 57 is allowable, among other reasons, for depending directly or indirectly from claim 1, which is allowable.

Claim 18 is further allowable since Marsh includes no express or inherent description of a manual timer.

Claim 56 is also allowable because Marsh includes no express or inherent description of a light therapy apparatus that includes a light output device with a plurality of light sources that are configured to output light of about 1,000 lux to about 2,000 lux at a distance of about 6 inches to about 12 inches.

Pederson

Claims 1, 7-12, 19, 20, 56-62, 64-68, 70-72, 83-89, and 93-95 have been rejected under 35 U.S.C. § 102(e) for being drawn to subject matter that is allegedly anticipated by the disclosure of U.S. Patent 6,875,225 to Pederson et al. (hereinafter “Pederson”).

Claim 68 was previously canceled without prejudice or disclaimer. Thus, the rejection of that claim is moot.

With respect to the subject matter recited in independent claim 1, as amended and presented herein, it is respectfully submitted that Pederson provides no express or inherent description of a light therapy apparatus with a light source that outputs light at an intensity of less than about 2,500 at a distance suitable for ocular light therapy. Rather, the description of Pederson is clearly limited to a light source that emits light having an intensity of “between 2,500 lux to 7,500 lux” at 12 inches. Col. 3, line 5; *see also* col. 1, lines 51-53. Therefore, Pederson does not anticipate each and every element of amended independent claim 1, as would be required to maintain the 35 U.S.C. § 102(e) rejection of independent claim 1.

Claims 7-12, 19, 20 56-62, 64-67, 70-72, and 86 are each allowable, among other reasons, for depending directly or indirectly from independent claim 1, which is allowable.

Independent claim 83, as amended and presented herein, is allowable because Pederson does not expressly or inherently describe a light therapy device with “a cover pivotally connected to [a] portable housing and configured to transition from a closed position over a front side of the portable housing to an open position behind an opposite, back side of the portable housing, the cover being positioned over [a] light source when in the closed position and supporting the portable housing in an upright position when the cover is in the open position.” Instead, the description of Pederson is limited to an embodiment in which a leg 40 that is pivotally secured to

the back side of a housing 10 flips out to support the housing (FIG. 3) and to an embodiment in which an upper, light source containing portion 110 of a housing flips up from a base 112 of the housing (FIG. 5).

Each of claims 84-86 is allowable, among other reasons, for depending directly or indirectly from independent claim 83, which is allowable.

Independent claim 87, as amended and presented herein, is directed to an ocular light therapy apparatus that includes at least one light source that is “configured to emit light primarily having a blue wavelength...” The description of Pederson is limited to light therapy apparatus the include “white LEDs,” which may be supplemented with LEDs of red or amber wavelengths. Col. 3, lines 17-26. Pederson lacks any express or inherent description that the light source of the light therapy apparatus disclosed therein may be configured to emit light primarily having a blue wavelength. Therefore, Pederson does not anticipate each and every element of amended independent claim 87, as would be required to maintain the 35 U.S.C. § 102(e) rejection of that claim.

Claims 88 and 89 are both allowable, among other reasons, for depending directly or indirectly from independent claim 87, which is allowable.

Independent claim 93, as amended and presented herein, recites a light therapy device with a multi-functional element. The multi-functional element is secured to the housing and configured to be associated therewith in a first position in front of the housing and in a second position behind the housing. In the first position, the multi-functional element covers the light source in the housing. In the second position, the multi-functional element supports the housing and the light source in at least one position that facilitates direction of light from the light source toward at least one eye of a subject. The light therapy apparatus of Pederson includes no multi-functional element that meets the requirements of amended independent claim 93. Thus, the subject matter recited in amended independent claim 93 is not anticipated by the disclosure of Pederson, as would be required to maintain the 35 U.S.C. § 102(e) rejection of independent claim 93.

Claims 94 and 95 are both allowable, among other reasons, for depending directly and indirectly, respectively, from independent claim 93, which is allowable.

Kuelbs

It has also been asserted that U.S. Patent 6,612,713 to Kuelbs (hereinafter “Kuelbs”) anticipates, under 35 U.S.C. § 102(b), the subject matter to which each of claims 83-88 is directed.

Amended independent claim 83 is directed to a light therapy device that includes a light source configured to emit therapeutic ocular light. The device of independent claim 83 also includes a portable housing and a transition member. The transition member provides a cover for the light source when in a closed position and serves as a base for supporting the portable housing in an upright position when in an open position. In the closed position, the transition member is located over a front side of the housing. In the open position, the transition member is located behind the housing.

It has been asserted that “the shaft portion of the Kuelbs device covers the lights when the umbrella is closed and also serves as a portion of the base which supports the device.” Office Action of January 10, 2008, page 4. The shaft 170, 270 of the device described in Kuelbs is an upright extension of a stand 118, 218 that receives a pole 115, 215 of the disclosed umbrella 111, 211. *See, e.g.*, FIGs. 2B and 2C; col. 6, line 44, to col. 7, lines 3; FIGs. 3B and 3C; col. 8, line 61, to col. 9, line 21. There is no express or inherent description in Kuelbs that the shaft 170, 270 is pivotally connected to any other part of the umbrella 111, 211 that it may be disposed in any position that covers a front side of the umbrella 111, 211, or that it may be disposed in another position behind a back side of the umbrella 111, 211. Therefore, Kuelbs does not anticipate each and every element of amended independent claim 83, as would be required to maintain the 35 U.S.C. § 102(e) rejection of that claim.

Claims 84 and 85 are both allowable, among other reasons, for depending directly from claim 83, which is allowable.

Claim 84 is further allowable because the umbrella of Kuelbs lacks a transition member that is configured to rest flat on a surface when pivoted to an open position.

Claim 85 is additionally allowable since Kuelbs neither expressly nor inherently describes any feature of the umbrella described therein is configured to rotate about a portable housing that contains a light source, between an open position and a closed position.

Independent claim 87, as amended and presented herein, requires that a light therapy device include at least one light source “configured to emit light primarily having a blue wavelength.” Amended independent claim 87 further requires that the at least one light source emit light “at an intensity suitable for ocular light therapy.”

Kuelbs lacks any express or inherent description that any of the disclosed umbrellas includes a light source that primarily emits blue light, or a light source that emits light at an intensity suitable for ocular light therapy. As such, Kuelbs does not anticipate each and every element of amended independent claim 87, as would be required for the Office to maintain the 35 U.S.C. § 102(b) rejection of that claim.

Claims 88 and 89 are both allowable, among other reasons for depending from independent claim 87, which is allowable.

Yano

Claims 83-85, 87, 88, and 93-97 stand rejected under 35 U.S.C. § 102(e) for being drawn to subject matter that is purportedly anticipated by the subject matter described in U.S. Patent 7,057,886 to Yano et al. (hereinafter “Yano”).

The description of Yano is limited to a portable video display device with a liquid crystal display (LCD) screen. Yano does not expressly or inherently describe that the LCD screen of that device includes a light source configured to emit light suitable for ocular light therapy, as is required of the light therapy devices recited in each of independent claims 83, 87, and 93. To repeat: if the LCD screen of the video display device of Yano did emit light suitable for ocular light therapy, it would be too bright to view.

Moreover, with respect to the subject matter recited in independent claim 87, it is respectfully submitted that Yano does not expressly or inherently describe that the LCD screen of the video display device disclosed therein is configured to emit light primarily having a blue

wavelength; to do so would be counterintuitive, as most people would find view of movies that are primarily blue to be highly undesirable.

In view of the foregoing, it is respectfully submitted that, under 35 U.S.C. § 102(e), each of independent claims 83, 87, and 93 is drawn to subject matter that is allowable over the video display device described in Yano.

Claims 84 and 85 are both allowable, among other reasons, for depending directly from independent claim 83, which is allowable. Claim 84 is further allowable because Yano provides no express or inherent description that the cover body 52, in its open position, rests flat on a surface. *See* FIGs. 1 and 19C.

Claim 88 is allowable, among other reasons, for depending directly from independent claim 87, which is allowable.

Each of claims 94-97 is allowable, among other reasons, for depending directly or indirectly from independent claim 93, which is allowable.

Withdrawal of the 35 U.S.C. § 102 rejections of claims 1-5, 7-13, 18-21, 56-62, 64-68, 70-72, 83-89, and 93-97 is respectfully requested, as is the allowance of each of these claims.

Rejections under 35 U.S.C. § 103(a)

Claims 1, 2, 4-6, 13-18, 21-25, 58-69, and 76-82 stand rejected under 35 U.S.C. § 103(a).

The standard for establishing and maintaining a rejection under 35 U.S.C. § 103(a) is set forth in M.P.E.P. § 706.02(j), which provides:

There are several requirements in establishing a *prima facie* case of obviousness against the claims of a patent application. All of the limitations of the claim must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 985 (CCPA 1974); *see also* MPEP § 2143.03. Even then, a claim “is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *KSR Int’l Co. v. Teleflex Inc.*, 82 USPQ2d 1396 (2007). The Office must also establish that one of ordinary skill in the art would have had a reasonable expectation of success that the purported modification or combination of reference teachings would have been successful. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). There must also be “an apparent reason to combine the known elements in the fashion claimed

by the patent at issue.” *KSR* at 1396. That reason must be found in the prior art, common knowledge, or derived from the nature of the problem itself, and not based on the Applicant’s disclosure. *DyStar Textilfarben GmbH & Co. Deutschland KG v. C. H. Patrick Co.*, 464 F.3d 1356, 1367 (Fed. Cir. 2006). A mere conclusory statement that one of ordinary skill in the art would have been motivated to combine or modify reference teachings will not suffice. *KSR* at 1396.

Whichter, Arao, and HP User’s Guide

Claims 1, 2, 4-6, 13-18, and 21-25 have been rejected under 35 U.S.C. § 103(a) for being drawn to subject matter that is assertedly unpatentable over the subject matter taught in U.S. Patent 6,381,124 to Whichter et al. (hereinafter “Whichter”), in view of teachings from U.S. Patent 6,596,571 to Arao et al. (hereinafter “Arao”) and “HP Jornada 700 Series Handheld PC User’s Guide (hereinafter “HP User’s Guide”), and, further, in view of statement in the BACKGROUND section of the above-referenced application that batteries may be used to power cold cathode fluorescent lights (CCFLs).

It is respectfully submitted that there are at least two reasons that teachings from Whichter, Arao, and the HP User’s Guide cannot be relied upon to establish a *prima facie* case of obviousness against any of the claims of the above-referenced application.

It is respectfully submitted that, without the benefit of hindsight that has been provided to the Office by the disclosure and claims of the above-referenced application, one of ordinary skill in the art wouldn’t have been motivated to combine teachings from Whichter, Arao, and the HP User’s Guide in the manner that has been asserted. This is because one of ordinary skill in the art of light therapy devices, as recited in the claims of the above-referenced application, would have no reason to apply teachings from laptop computers and other portable electronic devices with backlit LCD screens to light therapy devices. The backlit LCD screens of laptop computers and other portable electronic devices have very low power requirements and, consequently, output very little light. As such, one in the art of light therapy devices would not consider the light components of such devices to output light that is suitable for ocular light therapy.

Nor does Whichter include any teaching or suggestion that the CCFL backlights for a computer monitor will output light suitable for ocular light therapy, as would be required for Whichter to teach or suggest each and every element of independent claim 1. Like Whichter, Arao and the HP User's Guide, as well as the BACKGROUND section of the above-referenced application, each lack any teaching or suggestion of a device that includes light sources that may output light suitable for use in ocular light therapy.

Therefore, it is respectfully submitted that a *prima facie* case of obviousness has not been established against either independent claim 1 or independent claim 21, as would be required to maintain the 35 U.S.C. § 103(a) rejections of these claims.

Each of claims 2, 4-6, and 13-18 is allowable, among other reasons, for depending directly or indirectly from claim 1, which is allowable.

Claim 5 is additionally allowable because each of Whichter, Arao, the HP User's Guide, and the BACKGROUND section of the above-referenced application lacks any teaching or suggestion of reflectors that are positioned behind CCFL tubes.

Claim 6, which depends from claim 5, is also allowable since none of Whichter, Arao, the HP User's Guide, or the BACKGROUND section of the above-referenced application teaches or suggests parabolic reflectors positioned behind CCFL tubes, with each CCFL tube being disposed at the focal point of a parabolic reflector.

Claims 22, 23, and 25 are each allowable, among other reasons, for depending directly or indirectly from claim 21, which is allowable.

Claim 22 is additionally allowable because each of Whichter, Arao, the HP User's Guide, and the BACKGROUND section of the above-referenced application lacks any teaching or suggestion of reflectors that are positioned behind CCFL tubes.

Claim 23, which depends from claim 22, is also allowable since none of Whichter, Arao, the HP User's Guide, or the BACKGROUND section of the above-referenced application teaches or suggests parabolic reflectors positioned behind CCFL tubes, with each CCFL tube being disposed at the focal point of a parabolic reflector.

Claim 24 has been canceled without prejudice or disclaimer, rendering its rejection moot.

Whichter in View of Terman

Claims 1-3, 12-21, 24, 25, 56-69, and 76-82 stand rejected under 35 U.S.C. § 103(a). The rejections of claims 1-3, 12-21, 24, 25, 56-69, and 76-82 are based upon teachings from Whichter, in view of the subject matter taught in U.S. Patent 5,589,741 to Terman (hereinafter “Terman”) and, further, in view of art discussed in the BACKGROUND section of the above-referenced application.

Claims 24 and 68 were previously canceled. Thus, the rejections of claims 24 and 68 are moot.

The teachings of Whichter relate to a rugged, portable computer with a CCFL backlit LCD VGA monitor. Terman teaches a system for creating naturalistic illumination cycles to “reproduce an outdoor illumination level... at any geographic location... at any day of the year.” Terman, col. 1, lines 10-20.

It is respectfully submitted that the only apparent reason for one of ordinary skill in the art to have combined teachings from Whichter and teachings from Terman would have been to update the computer of the system of Terman. There would have been no reason to replace the monitor of a computer with a light source that may be programmed to provide naturalistic illumination cycles, as the purpose of a computer monitor is to display data and images, not to “reproduce an outdoor illumination level” indoors.

As the lighting devices of Terman are not part of a computer monitor, the “apparent reason” for the combination that has presented by the Office is not actually a reason for incorporating room lighting into a computer monitor. Furthermore, the Office has asserted that one of ordinary skill in the art would have been motivated to increase the intensity of light emitted from the monitor of the computer disclosed in Whichter, but doing so would only increase the discomfort to an individual who has to view the monitor—using light sources that reproduce outdoor light would be akin to looking into the sun. Therefore, the Office has not presented any apparent reason for one of ordinary skill in the art to replace the CCFL backlights of the monitor of the computer disclosed in Whichter with the high intensity lamps disclosed in Terman.

For this reason, the teachings of Whichter and Terman do not support a *prima facie* case of obviousness against any of claims 1-3, 12-21, 25, 56-69, or 76-82, as would be required to maintain the 35 U.S.C. § 103(a) rejections of these claims.

Pederson in View of Marsh

Claims 1-6, 13-17, 21-23, 25, 73-78, 80-82, and 90-92 have been rejected under 35 U.S.C. § 103(a) for being drawn to subject matter that is allegedly unpatentable over the subject matter taught in Pederson, in view of teachings from Marsh.

It has been asserted that one of ordinary skill in the art would have been motivated “to employ the inverter and CCFLs of Marsh in the device of Pederson... since these provide more uniform brightness, as taught by Marsh.” Unfortunately, there would have been no reason for one of ordinary skill in the art to substitute the high intensity (between 2,500 lux and 7,500 lux at 12 inches) LEDs of the light therapy device of Pederson with CCFLs, as Pederson teaches away from the use of fluorescent lights in a portable device. Pederson, col. 1, lines 21-23.

Even so, it is respectfully submitted that Pederson and Marsh do not teach or suggest each and every element of several of the rejected claims.

With respect to the subject matter recited in independent claim 1, neither Pederson nor Marsh teaches or suggests a light therapy apparatus with light sources “that output light suitable for ocular light therapy and of less than about 2,500 at a distance suitable for ocular light therapy.”

With respect to independent claim 21, the asserted combination of reference teachings would require that the LEDs of the light therapy device of Pederson be replaced with CCFLs—a combination from which Pederson teaches away.

As for the subject matter to which independent claim 73 is directed, replacement of the LEDs of the light therapy device of Pederson with the CCFLs of Marsh, as the Office has asserted would have been obvious at page 8 of the January 10, 2008, Office Action, would result in a light therapy device that lacks LEDs. Independent claim 73 requires LEDs, however.

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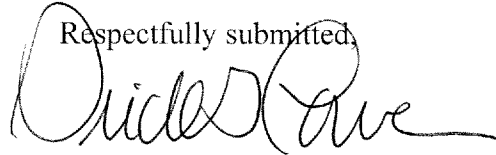
Moreover, neither Pederson nor Marsh teaches or suggests a light therapy device with its own power supply that has a "maximum weight of about four pounds," as would be required to render the light therapy device of independent claim 73 obvious.

It is respectfully requested that the 35 U.S.C. § 103(a) rejections of claims 1-6, 12-25, 56-67, 69, and 73-82, and 90-92 be withdrawn and that each of these claims be allowed.

CONCLUSION

It is respectfully submitted that each of claims 1-23, 25, 56-67, and 69-97 is allowable. An early notice of the allowability of each of these claims is respectfully solicited, as is an indication that the above-referenced application has been passed for issuance. If any issues preventing allowance of the above-referenced application remain which might be resolved by way of a telephone conference, the Office is kindly invited to contact the undersigned attorney.

Respectfully submitted,



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Date: April 10, 2008
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